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HIGH COURT OF CHHATTISGARH AT BILASPUR
S.B. : *HON'BLE SHRI JUSTICE VIJAY KUMAR SHRIVASTAVA*
MISCELLANEOUS APPEAL NO. 1091/2005

APPELLANTS:
Plaintiffs

1) Poonam Chand Jain, *aged about 45 years, S/o Shri* Bhanwarlal Jain (Loda), r/o Geeta Nagar, Raipur.

2) Santosh Tiwari, aged about *37 years,* S/o Shri Prabhulal Sharma, r/o Choubey Colony, Raipur

versus

Respondents
Defendants

1) Suneel Baid, aged about *37 years,* S/o Shri Bhanwarlal Bain (Jain), r/o Sadar Bazar, Mungeli, District *Bilaspur.*

2) Smt. Neelima Sharma, w/o. Shri Pramod Sharma, (Revenue Inspector), *r/o. Azad Chowk, Raipur.*

3) Smt. Shakri Sharma, Wife of Shri Sunil Sharma, r/o. Azad chowk, Raipur.

4) Smt. Savita @ Chetna, *Wife of Shri D.K. Tiwari,* Through Shri R.P. Sharma, Teacher, Durg.

PRESENT :

Mr. B.P. Sharma, Counsel for the appellants.
None for respondent No.1.
Shri Akhil Mishra, Counsel for respondents No. 2, 3 and 4.

O R D E R

(Dated 20/04/2006)

This appeal is directed against the order dated 2.8.2005 passed by District Judge, Raipur in Civil Suit No. 11-A/2005 whereby disallowing the application filed by appellants

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under Order 39, Rules 1 & 2 of the Code of Civil Procedure for grant of temporary injunction against respondents.

2. Defendant/respondent No. 1 entered into an agreement with appellants/plaintiffs to sell the suit land and received earnest money Rs. 80,000/- (Rupees Eighty Thousand) towards the sale consideration. Written agreement was executed on 3.8.2003. Parties to the agreement were agreed that respondent No.1 will execute the sale deed within a period of three months from the date of agreement. Appellants were always ready and willing to perform their part of contract by paying the balance sale consideration for obtaining the registered sale deed, but respondent No. 1 did not fulfill his obligations regarding demarcation etc., even after service of notice he failed to execute the registered sale deed. On the other hand, respondent No. 1 by registered sale deed dated 7.1.2004 and 22.3.2004, alienated the suit land in favour of defendants /respondents No. 2 to 4, therefore, appellants instituted a suit for specific performance of the contract and also filed an application for grant of temporary injunction.

3) The defendants/respondents opposed the suit. Defendants/respondents in reply pleaded that after expiry of the due period for execution of the sale deed the agreement to sale dated 3/8/2003 lapsed and after 4/11/2003 it has no binding effects. The area of Khasra No. 141/1 is 40,000 sq. ft. out of which only 8160 sq. ft. has been sold to respondents/defendants No. 2 to 4 and remaining land is still in possession and ownership of

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defendant/ respondent No. 1. The appellants were never willing and ready to perform their part, even after notice was issued by them after a lapse of 10 months. Defendants/ respondents No. 2 to 4 are bona fide purchasers for due consideration and are in possession of land purchased by them.

4) Learned Court below held that Khasra No. 141/1 bearing 40,000 sq. ft., out of which only 8,800 Sq.ft. of the land relates to agreement to sell. To identify the suit land, complete description has not been shown in the agreement except that frontage of the land shall be 110 sq. ft. towards roadside. Respondent No. 1 has pleaded that the land sold to defendants/respondents No. 2 to 4 is different therefore, a question arises, as to whether the land sold to defendants/respondents No. 2 to 4 is a part of the suit land. Further respondent No.1 has alleged that prior to service of notice he sold the lands, therefore, there is a prima facie case in favour of the appellants. The suit land has not been given in possession to appellants by the defendant/respondent No. 1. The suit land has also not been got demarcated. Defendants No. 2 to 4 have purchased part of the land of Khasra No. 141/1 by registered sale deeds. Their names have been recorded in revenue records and the land has been diverted for other than agricultural purpose. For construction of building necessary permission has been obtained by one of the respondents Smt. Neelima Sharma. Therefore, so far as the principle of balance of inconvenience and irreparable loss is concerned, that does not find favour of the plaintiffs/appellants.

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5) A copy of the agreement to sale is annexed along with the appeal. From perusal of the agreement, it is evident that the agreement took place between the appellants and respondent No. 1 vide which 8800 sq. ft. of land having 110 sq. ft. frontage from Khasra No. 141/1 is sold for a consideration of Rs.100/- only. It appears that there is some mistake but till it is rectified the document is to be read as it is. Further, from perusal of the document, it is evident that the sale deed was to be executed by the respondent No. 1 in favour of that person whose name will be suggested by the appellant. That clearly discloses that appellants were not bona fide purchasers but, towards the business of property dealing such an agreement has been obtained, therefore, if any loss is caused to them because of non-fulfillment of the transaction or for breach of the agreement that can be assessed hence, it cannot be accepted that the appellants shall suffer irreparable loss. The agreement itself is defective and ambiguous. Proper and complete description to identify the land has not been mentioned. Land is not in possession of the appellants and the agreement itself exposes that it has been got executed towards the business of property dealing. Therefore, when respondents/defendants No. 2 to 4 who have purchased part of the land out of Khasra No. 141/1 from owner in possession of that land and are in possession thereof. If they are restrained on the basis of the aforesaid agreement, it will cause substantial loss as also inconvenience to them, therefore, the principle of irreparable loss and balance of inconvenience finds favour of the defendants/respondents No. 2 to 4 instead of appellants.

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6) Learned Lower Court after due appreciation of the material available on record correctly held that principle of balance of inconvenience and irreparable loss does not find favour of the appellants, therefore, refused to grant interim injunction in their favour, did not commit any error which may call for any interference by this Court. In the result the appeal is liable to be dismissed and is accordingly dismissed. I.A. No. 1339/2006 stands disposed of.

7) Learned trial Court shall decide the suit without being influenced by any of the observations made herein and shall dispose it of as early as possible preferably within six months from the date of this order.

Sd//-
V.K.Shrivastava
Judge

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